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Customer No. 2359

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ronald A. Schachar
Serial No.: 09/556,143
Filed: April 21, 2000
Title: SEGMENTED SCLERAL BAND FOR TREATMENT OF
PRESBYOPIA AND OTHER EYE DISORDERS
Examiner: David M. Shay
Art Group Unit: 3735

MAIL STOP AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO WITHDRAW FINALITY OF OFFICE ACTION

The Applicant respectfully requests that the Commissioner invoke his supervisory authority under 37 C.F.R. § 1.181 and withdraw the finality of the Office Action dated June 29, 2007 in the above-identified patent application. The facts are as follows:

- (1) A final Office Action rejecting Claims 40-59 was mailed on December 15, 2006.
- (2) A response to the final Office Action was filed on February 15, 2007. This response attempted to amend Claim 54 as follows:

54. (Currently Amended) A method, comprising:

providing a laser operable to irradiate a sclera of an eye in a region of a ciliary body of the eye; and
operating the laser to irradiate the sclera in the region of the ciliary body to increase an effective working distance of a ciliary muscle of the eye.

(3) In an Advisory Action dated March 13, 2007, the Examiner refused to enter the amendment filed on February 15, 2007, saying that this amendment raised new issues that would require further search and/or consideration.

(4) In a Request for Continued Examination (RCE) filed on April 9, 2007, the Applicant amended Claim 54 as follows:

54. (Currently Amended) A method, comprising:
providing a laser operable to irradiate a sclera of an eye in a region of a ciliary body of the eye; and
operating the laser to irradiate the sclera in the region of the ciliary body to increase an effective working distance of a ciliary muscle of the eye;
wherein operating the laser to irradiate the sclera in the region of the ciliary body comprises reducing a thickness of the sclera in the region of the ciliary body without forming an opening completely through the sclera.

(5) The amendments to Claim 54 in the RCE included the exact same amendments that the Examiner previously determined would require further search and/or consideration.

(6) The Examiner issued a final Office Action rejecting Claims 40-59 on June 29, 2007.

(7) It is not proper to make final a first Office Action after an RCE where the RCE contains material "which was presented ... after final rejection ... but was denied entry because ... new issues were raised that required further consideration and/or search." (MPEP § 706.07(b), which is applied to RCEs via MPEP § 706.07(h)(VIII)).


Accordingly, the Applicant respectfully requests that the Commissioner invoke his supervisory authority under 37 C.F.R. § 1.181 and withdraw the finality of the Office Action dated on June 29, 2007.

No fee is believed to be due for the filing of this Petition. However, if there is a fee due for filing this Petition, the Commissioner is authorized to charge the Petition fee to Deposit Account No. 50-0208.

Respectfully submitted,

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